



Title 27

Text for

Readoption of Emergency Regulations Unified Program Single Fee System For State Agencies Department Reference Number: R-2005-18 Office of Administrative Law Emergency Number: 05-0916-01E

Readopt sections 15241 and 15242 to the California Code of Regulations, title 27, division 1, subdivision 4, chapter 1, part II, article 5, to read as follows:

§15241. Establishing the single fee for designated state agencies.

- (a) The Secretary shall determine the Unified Program single fee for any state agency designated to act as the CUPA pursuant to sections 25404.3 and 25404.5 (a) (2) (B) of the Health and Safety Code, based on data that sets forth the necessary and reasonable costs of CUPA implementation by that state agency, according to the methodology described in subdivision (c).
- (b) Each state agency designated to administer the Unified Program shall provide the Secretary with the information necessary to determine the amount of the single fee. Each designated agency shall annually submit to the Secretary, on a date specified by the Secretary, the amount of necessary and reasonable costs to carry out its responsibilities as the designated agency, including the supporting information requested by the Secretary. Necessary and reasonable costs shall include, but not be limited to, the costs of bad debts and uncollected fees.
- (c) The Secretary or the designated agency shall assess an annual fee on regulated businesses that is sufficient to recover the designated agency's net costs. The annual fee shall consist of a program element fee, levied on each program element to which a regulated business is subject, and a flat fee, levied equally on each regulated business within the CUPA's jurisdiction.
 - (1) The program element fee shall be calculated for each business by multiplying a base rate by an imputed hourly fee for each program element to which a business is subject. If a business is subject to multiple program elements, all program element fees to which it is subject shall be added to determine its total program element fee.
 - (A) Program element fee categories include aboveground storage tank, underground storage tank, California Accidental Release Program, business plan, hazardous waste generator, hazardous waste recycler, and tiered permit. In determining the base rate, the Secretary may

divide tanks and generators into categories of large, medium, and small, and divide tiered permits into categories of permit by rule, conditional authorization and conditional exemption.

(B) ~~The program element fee shall include a fixed fee of \$100 for each inactive tank. After the initial reporting period, the fixed fee for an inactive tank shall be adjusted annually to reflect increases or decreases in the cost of living as measured by the Consumer Price Index, issued by the Department of Industrial Relations or by a successor agency for the calendar year most nearly preceding the reporting period. Businesses that have filed documents required for permanent tank closure with the designated agency or its predecessor, and have discontinued storage of hazardous materials within the tank, shall not be subject to the program element fee beginning with the reporting period after such documents have been filed, but shall be subject to cost recovery pursuant to subsection (j).~~

(2) The flat fee shall be calculated for each business by dividing the designated agency's net costs, minus all estimated program element fee receipts, by the total number of regulated businesses within the CUPA's jurisdiction.

- (d) In addition to the annual fee, the Secretary or the designated agency shall assess the annual state surcharge pursuant to section 25404.5, subdivision (b) (1) of the Health and Safety Code.
- (e) No fee shall be assessed for any activity that is exempt from any fee pursuant to sections 25174.7 or 25205.3 of the Health and Safety Code. ~~For the reporting period in which a program element first becomes subject to regulation by the CUPA, the fee shall be pro-rated so that the regulated entity shall be subject to one twelfth of the annual fee for each calendar month in which the program element is subject to regulation.~~ Businesses with multiple program elements will be assigned the specified base rate for each element that is present at an individual site, except that businesses with more than one tank will be assigned the specified number of units based on the combined capacity of all active tanks per site, regardless of the number of such tanks.
- (f) The fee shall be due on the date specified by the Secretary or the designated agency, which shall not be less than ~~thirty~~ 30 days from the date of the bill. A penalty of ~~ten~~ 10 percent shall be assessed on any payment that is not received as postmarked by the due date. Beginning on the first day of the calendar month following the due date, simple interest shall accrue monthly on any unpaid fee at the rate established by the

State Board of Equalization pursuant to section 43155 of the Revenue and Taxation Code, and shall continue until the fee is paid. The penalty or interest may be waived if the Secretary or the designated agency determines that the failure to make a timely payment was due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect. Mere disagreement with the fee assessment shall not be deemed reasonable cause. A person seeking to be relieved of penalty or interest shall submit a written statement to the Secretary or the designated agency, signed under penalty of perjury, setting forth the facts upon which he or she bases the claim for relief.

- (g) If the Secretary or the designated agency provides a refund because of an erroneous billing, the refund shall be subject to simple interest at the rate provided in section 43455 of the Revenue and Taxation Code, unless the erroneous billing was due to incorrect information provided by the person who receives the refund. No refund shall be granted unless the person who seeks the refund submits written notification of the error to the Secretary or the designated agency within one year of the date the person is notified of the fee or cost assessment.
- (h) Failure to pay the required fee or cost reimbursement may result in a suspension by the Secretary or the designated agency of the regulated business's right to conduct the activity that is subject to the fee. The regulated business will receive at least ~~thirty~~ 30 days notice of the suspension. Failure to pay the fee, or conducting the activity during the suspension, shall be deemed a violation of the regulatory law administered by the Secretary or the designated agency. Any suspension will be stayed during the appeal of the fee under subdivision (k).
- (i) The Secretary shall review annually, and revise if necessary according to the procedures set forth in this section, the fees assessed pursuant to this section. The Secretary shall not revise the fees more than once per fiscal year. The Secretary shall publish the revisions to the fees in the California Regulatory Notice Register and accept comments on the proposed fees for 30 days thereafter. Following the 30-day comment period, the Secretary will consider comments and prepare a response that identifies the comments, the Secretary's findings, and the Secretary's final fee decisions. The Secretary will post the response on the Cal/EPA Unified Program web page, and will publish the final fee in the California Regulatory Notice Register.
- (j) The Secretary or the designated agency may recover the cost of non-recurring activities directly from the person who receives the non-recurring activities.

- (k) A person may dispute the assessment of the fee or cost recovery by submitting a petition to the director of the designated agency. The person must submit the petition, in writing, within one year of the date the person is notified of the fee or cost assessment. The petition must state the specific grounds upon which it is founded. If the matter cannot be resolved informally, the director shall designate a hearing officer to decide the petition. The hearing officer shall be in neither a subordinate nor a supervisory or managerial position to any staff involved in making the initial determination. A hearing may be conducted, either in person or by telephone, at which all relevant evidence will be admissible. The hearing officer will submit a recommendation in writing to the director, who may either affirm or deny the recommendation.

Note: Authority cited: Sections 25404 and 25404.6, Health and Safety Code.
Reference: Sections 25404.3, 25404.5, and 25404.6, Health and Safety Code.

§ 15242. Definitions.

The following definitions apply to section 15241:

- (a) "Base rate" is an estimate of the designated agency's workload standard (amount of time) to complete a program element task for each jurisdiction for which it acts as the CUPA.
- (b) "Generator" means a person who produces hazardous waste or first causes it to be subject to regulation, and who transports it off-site, either personally or through employees, agents or contractors, pursuant to a hazardous waste manifest. "Generator", for purposes of the fee assessed pursuant to section 15241, does not include a person who removes soil for the purpose of site mitigation, who removes an unexpected or extraordinary spill of hazardous materials, or who removes abandoned hazardous waste that was not produced in the course of conducting his or her business.
- (1) "Large generator" means a person who generates five hundred or more tons of hazardous waste per calendar year.
- (2) "Medium generator" means a person who generates at least one ton but less than five hundred tons of hazardous waste per calendar year.
- (3) "Small generator" means a person who generates hazardous waste in an amount less than one ton per calendar year.

- (c) "Imputed hourly fee" is the designated agency's hourly labor charge. It will be calculated by dividing eighty percent of the designated agency's net annual costs by the total estimated annual workload hours to administer the program.
- ~~(d)~~ ~~"Inactive tank" means a tank that has been permanently removed from service but has not yet been certified closed by the designated agency.~~
- ~~(e)~~ (d) "Net costs" means projected costs to administer the Unified Program during the fiscal year, minus any money collected from grants, reimbursements, penalties, cost recoveries, and allocations from the Rural CUPA Reimbursement Account. Any surplus or deficit from the preceding fiscal year will be subtracted from or added to the designated agency's cost projections for the following fiscal year.
- ~~(f)~~ (e) "Non-recurring activities" mean assistance that is none of the following: a regulatory compliance inspection, the issuance or approval of a permit or other form of authorization, the issuance of an order for corrective action or penalties, a plan review, or any assistance that is essential to carry out one or more of the foregoing regulatory activities. "Non-recurring activities" shall include, but not be limited to, oversight of facility closure or of remedial activities, including closure or remedial activities required by an order issued by the designated agency or another government agency.
- ~~(g)~~ (f) "Site" means real property that is owned or operated by the same person that is either contiguous or satisfies the meaning of "on site" in section 66260.10 of title 22 of the California Code of Regulations.
- ~~(h)~~ (g) "Tank" means a storage tank or group of storage tanks.
- (1) "Large storage tank" means a storage tank or group of storage tanks with a total capacity per site of thirty-four thousand gallons or more.
- (2) "Medium storage tank" means a storage tank or group of storage tanks with a total capacity per site of at least nineteen thousand gallons but less than thirty-four thousand gallons.
- (3) "Small storage tank" means a storage tank or group of storage tanks with a total capacity of less than nineteen thousand gallons.
- ~~(i)~~ (h) Except as otherwise stated in this section, words have the meanings provided by the following authorities, in order of precedence: (1) section 25404 of the Health and Safety Code; (2) article 2 (commencing with section 25110) of chapter 6.5 of division 20 of the Health and Safety Code; and (3) section 66260.10 of title 22 of the California Code of Regulations.

Note: Authority cited: Sections 25404 and 25404.6, Health and Safety Code.
Reference: Sections 25404.3, 25404.5, and 25404.6, Health and Safety Code.